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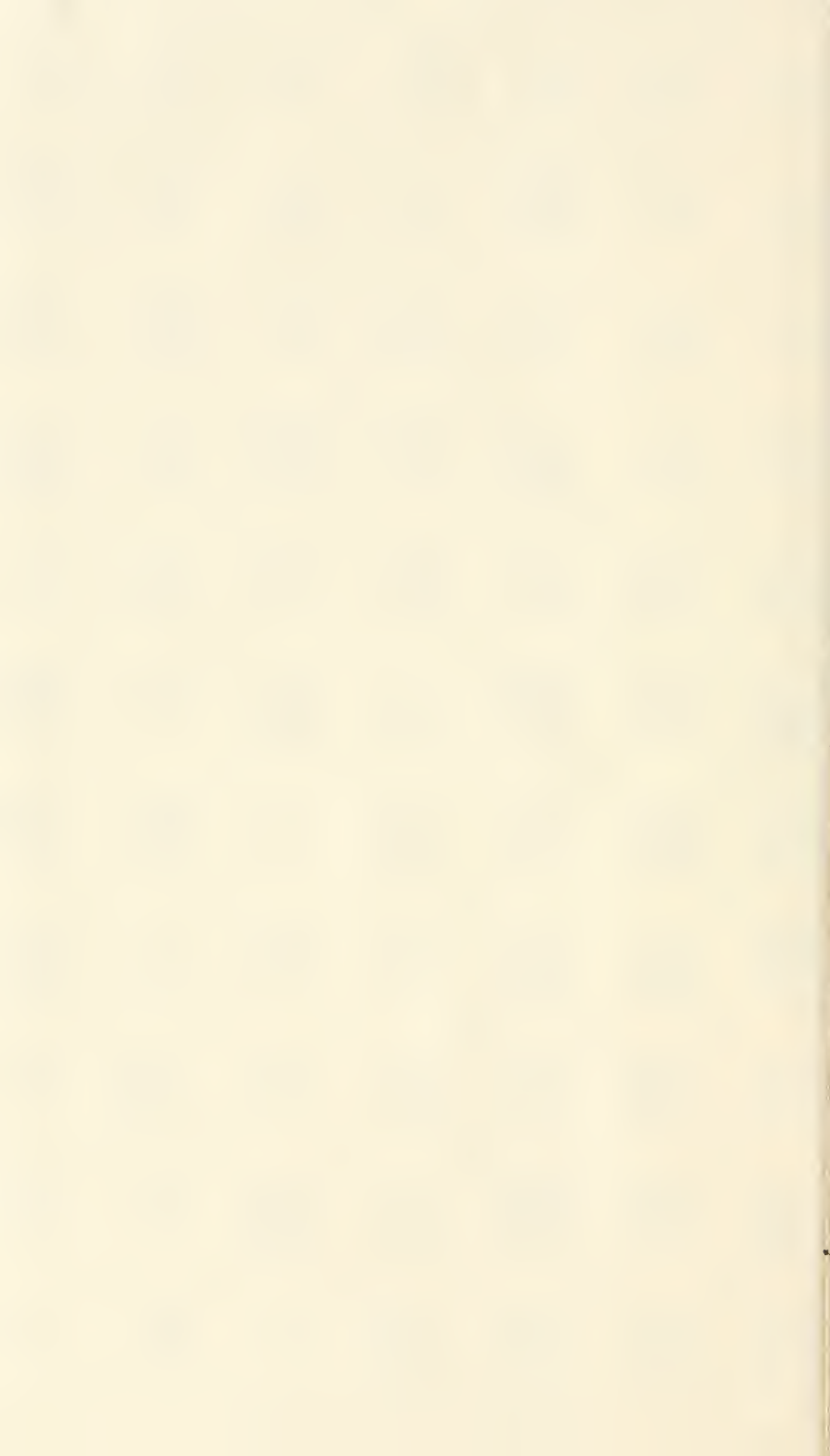


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U. S. A.
OFFICE of the SECRETARY of the WAR

SPEECH
OF
AYLETT BUCKNER, OF KENTUCKY,
ON
THE PROPRIETY OF ORGANIZING GOVERNMENTS
FOR
THE TERRITORIES.

25/0

DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 17, 1849.

Mr. CHAIRMAN: It is the duty of Congress to organise governments for the Territories of New Mexico and California. The military rule in force in these Territories during the continuance of the war, ceased upon the ratification of the treaty of peace with the Republic of Mexico. The only government that obtains there now is one partly civil and partly military, established by the necessity of the case, and ought to be superseded at the earliest practicable period of time. The only difficulty in the way of legislation is to be found in the question of slavery. The agitation of this subject has already disturbed the harmony and peace of the Union, and is regarded by some as threatening its dissolution. It is the part of wisdom to remove this cause of discord, to close up this fountain of bitter waters. In the adjustment of the terms by which governments are to be given to these Territories, the slave States cannot suffer. Governments once established, the North will be hushed into silence, fanaticism lose the food which feeds it, and the Union become more indissolubly united. The factionists of the North and South, by the advocacy of unwise measures and the use of imprudent speeches, have fomented sectional jealousies and excited prejudices, which, if not arrested, must lead to the most unhappy results. Remove the cause of the excitement, and tranquility necessarily follows. Give governments to these Territories, and the whole country will glide smoothly and rapidly into a state of quietude equal to that which prevailed anterior to the origin of the controversy.

In my opinion, slavery can never be planted in these Territories. Many causes exist, insuperable in their nature, to prevent any such result. In the first instance, should Congress sanction the introduction of slavery within their limits, it would be conferring a useless privilege. Their soil, climate, and agricultural productions forbid the profitable employment of negro slaves. A careful perusal of the reconnoissance made of these Territories by Col. Fremont, Lieuts. Emory, Abert, Cooke, and Johnston, who were directed by the President to examine the country, and to ascertain, among other objects, its agricultural and mineral resources, must satisfy every unprejudiced mind of this fact. Nine-tenths of it is either rough, barren, and inaccessible mountains, whose summits in many instan-

ces are covered with everlasting snows, or vast, sterile, and arid deserts, destitute of water, vegetation, and all animal subsistence. The residue of the country is at times partially covered with grass: occasionally an oasis is found, rich in verdure, but in the greater part of it nature makes but feeble and often abortive attempts to cover her nakedness. The year is divided into but two seasons, the wet and the dry. The first is from December to March; the last, the remainder of the year. During the wet season the rains often fall in large quantities, but in the dry season not a drop is looked for, or experienced. Then an oppressive and even intense heat predominates, consuming the grass and drying up the small streams of water. Famine, the most direful of all calamities that can afflict a country, would prevail, but for the manner in which the soil is cultivated. This is done by irrigation; the water is drawn from the streams by the use of canals and other artificial contrivances, and is thus made to overflow the fields in cultivation, giving sustenance and nourishment to the growing crops. But I will quote from the authorities just mentioned for a more full and accurate description of this country and of its physical peculiarities. "The country," says Lieut. Emory, "from the Arkansas to the Colorado, a distance of over 1200 miles, in its adaptation to agriculture, has peculiarities which must forever stamp itself upon the population which inhabits it. All of North Mexico, embracing New Mexico, Chihuahua, Sonora, and the Californias, as far north as the Sacramento, is, as far as the best information goes, the same in the physical character of its surface, and differs but little in climate and products.

"In no part of this vast tract can the rains from Heaven be relied upon, to any extent, for the cultivation of the soil. The earth is destitute of trees, and in great part also of any vegetation whatever.

"A few feeble streams flow in different directions from the great mountains, which in many places traverse this region. These streams are separated sometimes by plains, and sometimes by mountains, without water and without vegetation, and may be called deserts, so far as they perform any useful part in the sustenance of animal life. The cultivation of the earth is therefore confined to those narrow strips of land which are within the level of the waters of the streams, and wherever practised in a community with any success, or to any extent, involves a degree of subordination and absolute obedience to a chief, repugnant to the habits of our people.

"The chief who directs the time and quantity of the precious irrigating water must be implicitly obeyed by the whole community. A departure from his orders, by the waste of water, or unjust distribution of it, or neglect to make the proper embankments, may endanger the means of subsistence of many people. He must, therefore, be armed with power to punish promptly and immediately."

Again: Describing the country east of the Tulare lakes, and south of the parallel of 36° , and the country between the Colorado and Gila rivers, he says: "Of these regions nothing is known, ex-

cept from the reports of trappers, and the speculations of geologists. As far as these accounts go, all concur in representing it as a waste of sand and rock, unadorned with vegetation, poorly watered, and unfit, it is believed, for any of the useful purposes of life. A glance at the map will show what an immense area is embraced in these boundaries; and, notwithstanding the oral accounts in regard to it, it is difficult to bring the mind to the belief in the existence of such a sea of waste and desert; when every other grand division of the earth presents some prominent feature in the economy of nature, administering to the wants of man."

The principal agricultural productions of this country are Indian corn and wheat; the grape is successfully cultivated, and makes a fair quality of wine; detached and small parts of it offer good pasturage for cattle and sheep; but the remote and isolated position of New Mexico from the commercial parts of the world will prevent its ever having a foreign market for its surplus products. The nearest settlements to New Mexico on the west are the towns of the Pacific coast, distant six or seven hundred miles, and separated by nearly impassable deserts. Chichuahua is distant from the most southern settlement of New Mexico four hundred and twenty miles, and most of the intervening country desert; the traders are usually from thirty to forty days transporting loads from Santa Fe to Chichuahua. To the east the nearest settlements are our own borders; the distance to Fort Levanworth by the usual travelled route, is eight hundred and seventy miles. New Mexico has no railroads, canals, or navigable rivers, to facilitate intercourse with, or cheapen transportation to foreign markets. But, from the best data furnished, it may well be doubted, if this country can afford much of an agricultural surplus after supplying the wants of its inhabitants. The necessity for irrigation, and the small supply of water found in that country fixes a limit, and a very narrow one, to all the tillable soil, and consequently to the amount of its productions. Lieut. Emory, speaking of the amount of tillable soil in this country, says: "The surface covered with vegetation, though small, is difficult to estimate; and perhaps it is unimportant that an estimate should be made, since the productiveness of these regions depends on other considerations than smoothness of surface and character of soil. The rains cannot be relied upon, and the tiller of the earth depends upon irrigation from the mountain streams for his crops. The extent of ground capable of tillage is thus reduced to very narrow limits, easy of computation. A knowledge of the water courses, their fall, volume, and extent, and the quantity of lands on their margin within the level of these waters, are the data upon which the computation must be based. Taking this as a guide, an inspection of a map will give a general idea of the extent of arable ground, sufficiently correct for all practicable purposes; but, in candor, it should be said, that many streams laid down in it disappear in the sand, while the rocky cliffs, forming the banks of others, render navigation impracticable." Lieut. Peck remarks upon the same subject, when speaking of the Territory of New Mexico, that a large portion of it is made up of sands, rocks, and desert waste. He says: "If you cast your eye upon the map, you will see from

the position of the towns where the arable land is found. A narrow strip along the Del Norte, with a few detached patches here and there upon the affluents of the same river, constitute it all; for there is very little land not already improved that is worth occupying." The present population of New Mexico is estimated at one hundred thousand persons. A very large proportion of this number is composed of poor, illiterate, and degraded Indians, substantially slaves to the few resident Mexicans of Spanish descent, and who, from their extreme indigence and a limited demand for labor, are compelled to work for a mere pittance. The remoteness of New Mexico from a suitable market, her abundant cheap labor, the small amount of tillable soil within her limits, and the great expense and trouble attendant upon its cultivation, taken in connection with the character of her agricultural products and other commercial resources, must prevent the profitable transfer of negro slave labor from the rice, cotton, and sugar plantations of the South, or from the corn, wheat, tobacco, and hemp fields of the Western States, to the banks of the Rio Grande. Nature has more effectually prohibited slavery in New Mexico than can any legislative enactment of Congress. The same objections obtain against all the territories acquired by the treaty with Mexico, subject to slight modifications in respect to the country embraced within the valley of the Sacramento and San Joaquin rivers. This valley is situated between the Sierra Nevada mountains and the Pacific ocean, north of the 36th parallel, and contains the only valuable territory in California. Its general character is barren and unproductive, yet with a fine climate and the use of irrigation, many parts of it are made to yield abundantly, and could only be made to produce by these means. Wheat and corn, rye and oats, with all the fruits of the temperate and many of the tropical climates, are cultivated with success. But this valley can be of little value for agricultural purposes, and must be incapable of sustaining, by its own agricultural resources, the dense population destined to inhabit it.

The rivers of the valley begin to rise with the rains of the wet season, and are kept up the first part of the summer by the melting of the snows in the adjacent mountains. They often overflow their banks, and submerging many of the contiguous bottoms, and this at a season when it does great damage to the crops; the low temperature of the water not only checks the growth, but more frequently destroys the entire crop whether of grass or grain. These inundations do not take place every year. That depends upon the amount of snow which accumulates in the neighboring mountains during the preceding winter. The overflows are of frequent, not annual, occurrence. This overflow offers an impediment which will prevent the cultivation of many of those rich alluvial bottoms now regarded by many as furnishing fine sites for productive farms.

The small valleys at the foot of the mountains, which, from their rapid descent and the streams of water which occasionally flow through them and furnish the means and facilities of irrigation, are the only spots of soil which can be cultivated, and are the seats of the missions. The amount of tillable soil in this valley will be

found upon actual experiment, comparatively speaking, confined to a very few acres—far too few to meet the wants of its inhabitants. Until within a few years this valley has been occupied by intelligent, industrious, and energetic Catholic missionaries from Spain for at least two hundred years. During that period of time they were not enabled, with the co-operation of the tractable Indian labor of the valley, to convert it into an agricultural country. Natural causes, and not the want of industry or of skill on their part, defeated the experiment.

The valley is said, at times, to furnish fine pasturage for cattle, but the grazier will encounter many difficulties in the pursuit of his occupation. The genial rains of the wet season covers the whole country with a rich and luxuriant carpet of vegetation. During this time the cattle, bountifully supplied with nutritious grasses, soon become fat, but as the dry season advances the grass gradually disappears from the face of the country, the result of the excessive heat and protracted dry weather, it then presents the parched and desolate and arid appearance of a desert, and the cattle, deprived of their accustomed food, becomes rapidly poor and often die of starvation.

Captain Wilkes, of the Exploring Expedition, says: that “when in California, no rain had fallen for eleven months; that none fell for the next six; making in all seventeen consecutive months of drought. The cattle died by hundreds upon the plains. He was informed by residents that such droughts were not unfrequent.” Greenhow, in his history of California, says “heavy rains are of rare occurrence, and two years without any is not unusual.” The droughts and consequent destruction of the grass must ever render stock-raising a precarious and often unprofitable business.

This valley is estimated to contain twenty thousand Indians who, for two centuries, have performed all the labor needed in the country, “and are stimulated to work by a salary of three dollars per month, and repeated floggings.”

Lieutenant Emory says: “This race, which, in our country, has never been reduced to slavery, is in that degraded condition throughout California, and do the only labor performed in the country. Nothing can exceed their present degraded condition. For negligence or refusal to work the lash is freely applied, and in many instances life has been taken by the Californians without being held accountable by the laws of the land.” But the wages of labor have been materially changed by the recent discovery of the great and unprecedented mineral wealth of that country. The region containing these mines of gold are at this time unappropriated; all who desire and have the opportunity, can work there for golden treasure without the fear of interruption from the Government of the United States. This bright and alluring prospect offered of acquiring in a short time an independent fortune by mere manual labor, has caused a large, very large, stream of immigration to flow in that direction, and which will never cease until the whole country is completely inundated by a dense population, inured to toil, and who have looked to manual labor as the means of livelihood. This immigration will be chiefly from the free States and the thick-

ly populated countries of Europe, opposed upon principle and from motives of interest to the institution of slavery. But the condition of things in California is destined to undergo a considerable change; the lands will be surveyed and sold by the United States Government and purchased by capitalists. Then will be found the California Indian and the immigrant competing with each other at the mines for employment. The number seeking work will exceed the demand for it. To plant slavery in California and perpetuate it, slave men and women must be taken there, and families of them reared. Go to any farm in Kentucky where slaves are owned, and it will be proved that not more than one in four, on an average, are enabled to maintain themselves. The women with young and increasing families cannot be employed so as to earn food and raiment for themselves and families. The old and infirm are encumbrances. Now, deduct the expense of maintaining a family of four persons (including the payment of taxes and doctor's bills) from the gross income of one of the number, and a basis is established upon which can be truly estimated the nett profits derivable from the employment of slave labor.

A voyage by sea to California cannot be performed in less time than three months, it is attended with considerable inconvenience and great dangers, having to make the circuit of the whole of South America, doubling Cape Horn, being the most southern extremity of the Western Continent; an undertaking considered hazardous even by experienced navigators. A voyage through the Gulf of Mexico, across the Isthmus of Panama, and thence by the Pacific Ocean to California, is very expensive and still more dangerous. A journey by land across the Rocky Mountains, and the immense deserts which intervene between the United States and California, present scenes of hardships to be endured, and obstacles to be surmounted, calculated to deter the most intrepid adventurer. Those going by this route, collect together on the western borders of the State of Missouri early in the spring, and on the appearance of the grass, commence a forward movement, and continue travelling until late in autumn, by which time, if fortunate, they arrive in the inhabited portions of California; but should they, from any misfortune or untoward accident, be delayed, winter overtakes them whilst yet in the mountains, the grass is destroyed, the game disappears, the cold becomes intense, their cattle die of starvation, and they, impeded in their journey by the deep snows, chilled and benumbed by the frigid climate, and destitute of food, die a most horrid death; whole parties have met with this horrid fate in the mountains.

The prominent objections militating against the introduction of slavery into these Territories, consists first, in the cost, trouble, and danger of transporting slaves from the United States to that country; and, secondly, in the comparatively few of the whole number of a family whose labor can be rendered pecuniarily advantageous to the owner. Thirdly, from the high price of living, the result of a condition of things and a combination of circumstances beyond control. But little of the soil is subject to cultivation, which is attended with great trouble and expense, and when taxed to its ut-

most power of production will not yield sufficient food for the wants of its inhabitants. They will have to look to a foreign market to supply the deficit, which necessarily enhances the price of provisions, and increases the expense of living. The fourth obstacle to the introduction of slavery, is the low wages of labor effected by competition for employment between the free immigrant and the California Indian. Let any man of unprejudiced mind take into consideration these difficulties and he will, in my opinion, come to the conclusion that slavery can find no abiding place in California.

Lieutenant Emory, who traversed the most of this country, having a regard to its physical appearance, and probable capacity, says, upon the subject of negro slavery, that "the profits of labor are too inadequate for the existence of negro slavery. Slavery, as practiced by the Mexicans, under the form of peonage, which enables their master to get the services of the adult while in the prime of life, without the obligation of rearing him in infancy, supporting him in old age, or maintaining his family, affords no data for estimating the profit of slave labor, as it exists in the United States. No one who has ever visited this country, and who is acquainted with the character and value of slave labor in the United States, would ever think of bringing his own slaves here with any view to profit; much less would he purchase slaves for such purpose. Their labor here, if they could be retained as slaves, among peons, nearly of their own color, would never repay the cost of transportation, much less the additional purchase money." The President of the United States, in his late annual message, expresses the belief that in all probability California and New Mexico, from the nature of their soil and climate, are unsuited to the institution of slavery. He says: "The question is believed to be rather abstract than practical, whether slavery ever can or would exist in any portion of the acquired territory, even if it were left to the option of the slaveholding States themselves. From the nature of the climate and productions in much the larger portion of it, it is certain it could never exist, and in the remainder, the probabilities are, it would not." But, if the nature of the climate and the character of the productions of this country will not exclude the use of slavery, other causes exist which will. Upon the transfer of territory by one government to another, no laws are repealed or abrogated in the country ceded, except such as are inconsistent with the relations which those people sustain to the new government. The acquisition only implies change of dominion and allegiance, a transfer of legal authority and executive control, and all laws not necessarily inconsistent therewith, remain in full force and unaltered, until modified or abolished by the new government. The necessity for such a regulation is apparent. The interval of time which must necessarily elapse between the transfer and organization of a new code of laws for the people of a ceded territory would leave them exposed to all the dangers appertaining to a country without government, if no provision had been made for such a contingency. International law recognised as binding by all the civilized nations of the whole world, from considerations of imperative necessity, and having its foundation on the principles of natural justice and equity, affords

protection against the evils of anarchy and the perils of unrestrained licentiousness in such cases. On this subject Vattel thus expresses himself: "The fundamental regulation that determines the manner in which the public authority is to be executed, is what forms the constitution of the State. In this is seen the form in which the nation acts, in quality of a body politic; how, and by whom the people are to be governed; and what are the rights and duties of the governor. 'The laws are regulations established by public authority, to be observed in society.' The laws made directly with a view to the *public* welfare are *political* laws, and in this class, those that concern the body itself, and the being of society, the form of government, the manner in which the public authority is to be exerted; those, in a word, which together form the constitution of the State, are the *fundamental laws*. The *civil laws* are those that regulate the rights and conduct of the citizens among themselves."

Chief Justice Marshal, in the case of the American Insurance Company *vs.* Canter, (1st Peters' Reports,) speaking in relation to the transfer of the Territory of Florida, by the King of Spain, to the Government of the United States, and the effect produced by that cession, says: "On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo *any* change. Their relations with their former sovereign are dissolved, and new relations are created between them and the Government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it, and the law which may be termed *political* is *necessarily* changed; although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly-created power of the State." And again in the same opinion, says: "It has already been stated, that all the laws which were in force in Florida, while a province of Spain, those excepted which were *political* in their character, which concerned the relations between the people and their sovereign, remained in force until altered by the Government of the United States. Congress recognises this principle by using the words, 'laws of the territory now in force therein.'"

It is evident from these authorities, that none of the laws in force in New Mexico and California at the time of their cession to the United States were abrogated except those termed *political*, and those are only termed *political* which refer to the relations existing between the people and the new Government. The allegiance due from the citizens of these Territories to the Republic of Mexico, was transferred by the act of cession to the Government of the United States. That transfer originated in the necessity of the case. But all the other laws, the municipal or local laws, or those which regulate the rights and conduct of the citizens among themselves, remain obligatory and unaltered.

All writers on national law, and judges who have given judicial decisions upon the subject, agree in the opinion that the relation of master and slave does not exist by the law of nature; nor is the claim of the master, like the right to property in general, recognised

by all civilized communities ; it owes its existence to positive law. Slavery, says the Supreme Court of the State of Mississippi, (Walker's Reports, page 36,) "is condemned by reason and the law of nature ; it exists, and can exist only through municipal regulations." In the same volume, page 83, the Court says : "In the Constitution of the United States, slaves are expressly designated as *persons* ; the right of the master exists, not by the force of the law of nations or of nature, but by virtue only of the positive law of the States." The Supreme Court of the State of Louisiana, in the 14th of Martin's Reports, page 470, says : "Slavery is sanctioned by the laws of this State, but we consider that a right existing by a positive law of a municipal character, without foundation in the law of nature." And the Supreme Court of Kentucky, says : "Slavery is sanctioned by the laws of this State, but we consider that as a right existing by a positive law of a municipal character, without foundation in the law of nature." Slavery, if these authorities are entitled to respect, can only exist by a positive law, created by usage, custom, or statutory provision. It is not necessary to forbid it : it is enough that it is not specially authorized. The Republic of Mexico had, long before the cession of this country to the Government of the United States, abolished negro slavery ; and such was the law of that country at the time of this acquisition.

By the constitutive acts of the Mexican Congress, adopted 31st January, 1824, the 30th article declares, "It is the duty of the nation to protect by wise and just laws the rights of man and of the citizens." On the 13th of July, in the same year, the Mexican Congress decreed as follows : 1st, "The commerce and traffic in slaves, from whatever power, and under whatever flag they may come, is and shall be forever prohibited in the territory of the Mexican United States." 2d, "Slaves introduced contrary to the tenor of the preceding article are free, from the fact alone of their treading the Mexican territory." President Guerrero, on the 15th September, 1829, upon the authority granted by the constitutive acts, and according to the provision of the 30th article, decreed, 1st, "that slavery be exterminated in the Republic ;" 2d, "consequently, those are free, who up to this day have been looked upon as slaves."

I am constrained to believe that Congress has the sole and exclusive right to legislate for the Territories ; to organize governments for them, and to regulate by law all matters of local and domestic concern appertaining to the inhabitants residing in such Territories. This opinion is sustained by the decision of the Supreme Court of the United States, and is in conformity with the whole practice of the General Government from the time of its foundation up to the present day.

The right of the General Government to acquire territory under the war and treaty-making power is granted. It would seem to follow, as an inevitable consequence, that it possesses the power to govern whatever it might acquire ; the former is but an incident to the latter. The citizens of Territories acquired do not become entitled to self-government. If possessed of that right, the principal object of acquisition, the right of jurisdiction and dominion, would be frustrated. In this particular instance, recognise the right of

self-government to the citizens of these Territories, and they might, and in all probability would, liberate themselves from all obedience and responsibility to this Government. Annexation took place without asking their consent, and without consulting their wishes upon the subject. A union thus effected, by a violation of one of the fundamental principles of republicanism, as avowed in our Declaration of Independence, that all Governments derive their just powers from the consent of the governed. It was an odious act of tyranny, for the perpetration of which no reasonable excuse can be offered. These Territories are not subject to State jurisdiction. A State, by the Constitution, is expressly prohibited from entering into any treaty with a foreign power, or into a compact, or agreement, with another State, or to engage in war unless actually invaded, or in such imminent danger as will admit of no delay. She acts only in self-defence. Territory, therefore, can neither be gained for a State by conquest, or acquired by treaty. The power and jurisdiction of a State is necessarily confined to her territorial limits. Any other arrangement of jurisdiction would produce collisions between the States and the General Government, dangerous to the integrity of the Union. Separate legislation for the territory of thirty independent States, with an attempt to enforce their laws within its limits, would have a tendency to cause thirty civil wars. The conflict in the laws of the several States would utterly confound the judges, and close every avenue to the temple of justice. The General and State Governments are supreme and independent within their respective spheres, and whilst each revolves in its appropriate and independent orbit, harmony exists between them, but suffer either to move without the circle of its peculiar duties, and strife is the inevitable consequence. Yield this power to the General Government where it justly belongs, and no clashing of jurisdiction can take place, and justice will be administered without delay or impediment. The Territories must then be under the jurisdiction of the General Government or without government at all. In my opinion, the power is conferred on Congress in that clause of the Constitution which declares: "Congress shall have power to make all laws necessary and proper for carrying into execution the power vested by this Constitution in the Government of the United States." We have, by the war and treaty-making power, the ability to acquire territory, and by this provision of the Constitution, Congress has the right to legislate for it when acquired, to carry into effect the true and legitimate object of acquisition, the right of jurisdiction and dominion. But there is an express grant of power in the third section of the fourth article of the Constitution, which says: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property belonging to the United States." This general clause is amply sufficient to authorise Congress to establish Territorial governments, and in fact to do anything in the Territories not prohibited in the Constitution itself. Some persons contend that this clause only gives Congress the power to sell the land, without the power to regulate the municipal affairs of those who settle upon it. But it is evident a government may hold property in territory without

owning one foot of the soil. If the lands are appropriated at the time of its annexation, the right of jurisdiction is the only power acquired, and which was the case in the annexation of Texas to the United States; the unappropriated lands were, by the terms of the articles of annexation, reserved to the use of the State.

Vattel informs us, in his *Laws of Nations*, "that the right of a people to a country implies two things: First. The *domain*, by virtue of which the nation alone may use the country for the supply of its necessities, may dispose of it as it thinks proper, and derive from it every advantage it is capable of yielding. Second. The *empire*; on the right of sovereign command, by which the nation directs and regulates, at its pleasure, every thing they possess in the country. When a nation takes possession of a country, it is considered as acquiring the empire or sovereignty of it, at the same time with the domain, for since the nation is free and independent, it can have no intention in settling in a country to leave to others the right to command, or any of those rights that constitute sovereignty." This authority clearly sustains the position that possession of territory gives a full and perfect right to govern and control it. On the subject of the property the nation owns in her territory, Vattel says: "We have already explained how a nation takes possession of a country, and at the same time gains possession of the domain and government thereof. That government, with everything included in it, becomes the property of the nation in general." In this passage, the term property is used in a broader sense than mere land; it implies jurisdiction and full legislative power over it. Then the United States Government, upon obtaining possession of these Territories, acquired the supreme right of legislation over them, unless the Constitution expressly limits it. The only limit to the exercise of this power is to be found in the sound discretion and presumed integrity of the Congress. This opinion is confirmed by the decisions of the Supreme Court of the United States.

In the case of *schooner Exchange vs. McFaddon and others*, (7th Cranch,) Judge Marshal says: "The jurisdiction of a nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitations not imposed by itself. All exceptions, therefore, to the full and complete power within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source." Again, in the case of the *American Insurance Company vs. Canter*, (1st Peters,) the Court says: "until Florida shall become a State, she continues to be a Territory of the United States, governed by that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory and property of the United States.'" Again, in the case of the *Cherokee Nation vs. the State of Georgia*, the Court says: "The power given in this clause is of the most plenary kind. Rules and regulations respecting the territory of the United States; they necessarily confer complete jurisdiction. It was necessary to confer it without limitation, to enable the Government to redeem the pledge given to the old in relation to the formation and powers of the new States." The same doctrines are reiterated in the case of *Gratiot and others* (14th Peters, 537.)

I will briefly recite the acts of Congress ratifying this construction of the Constitution, and having the force of legislative precedent.

1st. The ordinance of 1787 was recognised at the first session of the first Congress. The precedent is coeval with the birth of the Government. Many of those persons who sat in the Convention which framed the Constitution were members of the first Congress, and it may be almost denominated the work of the framers of that instrument. This ordinance prohibited slavery or involuntary servitude in the territory northwest of the Ohio river. The act was signed by Gen. Washington.

2d. On the 7th April, 1798, an act was passed authorising the establishment of a Government for the Territory of Mississippi. That act authorized the President to establish a government therein, in all respects similar to that in the northwest of the Ohio river, except the article prohibiting slavery; it then forbid the importation of slaves into the Territory from any place without the limits of the United States. This act was passed some considerable time before Congress was authorised by the Constitution to prohibit the importation of slaves into the States which were originally parties to the federal compact. This provision of the Constitution applied only to the existing States; it did not extend to the States thereafter to be formed, nor to the Territories of the United States, the exercise of jurisdiction in the organization of this Territory over matters of domestic concern to the inhabitants, and especially over the subject of slavery, without opposition, shows the undisputed interpretation put, at that day, on the Constitution in respect to the power of Congress upon the subject. There was a direct exercise of legislative power in the Territories which was positively prohibited in respect to the States existing at the adoption of the Constitution.

3d. In the year 1800, Congress passed an act to divide the territories belonging to the United States northwest of the Ohio river, into two separate governments. This act gave to the Territory of Indiana a government similar to that provided by the ordinance of 1787 for the Northwest Territory.

4th. On the 26th March, 1804, an act passed dividing Louisiana into two Territories. The 10th section of the act had three provisions in respect to the subject of slavery. First, the importation of slaves from any place without the limit of the United States was prohibited. Second, the importation from any place within the limits of the United States of slaves imported since the 1st of May, 1798, was prohibited; and third, the importation of slaves except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slaves, was prohibited. Congress, by these prohibitions, imposed restrictions upon its extension even within Territories in which it existed. It was a direct prohibition of the domestic slave trade—it was an act of power in respect to the Territories which Congress did not possess in respect to the States. This act was signed by Mr. Jefferson.

5th. On the 11th January, 1805, an act was passed establishing the Territory of Michigan with a government including the sixth article of the ordinance of 1787.

6th. On the 3d February, 1809, a similar government was established for the Territory of Illinois. These acts were approved by Mr. Jefferson.

7th. On the 4th June, 1812, an act was passed providing for the government of the Territory of Missouri, and the laws and regulations in force in the district of Louisiana were continued in operation.

8th. On the 3d March, 1817, a government was formed for the Territory of Alabama, and the laws then in force within it as a part of Mississippi, were continued in operation.

9th. On the 2d March, 1819, the Territory of Arkansas was formed from the Territory of Missouri, and a government formed for it.

10th. On the 30th March, 1822, an act was passed for the territorial government of Florida, containing provisions making it unlawful to import or bring within the said Territory, from any place without the Territory of the United States, any slave or slaves. These acts were passed under Mr. Monroe's Administration.

11th. On the 20th April, 1836, an act was passed establishing the territorial government of Wisconsin, securing to the inhabitants "the rights, privileges and advantages" secured to the people of the Northwest Territory by the ordinance of 1787. This act was signed by Gen. Jackson. On the 12th June, 1838, a territorial government for Iowa was established, and the laws of the United States extended over it. This act was signed by Mr. Van Buren.

12th. Near the close of the last session of this Congress, a government was established for the Territory of Oregon, extending the ordinance of 1787, or, in other words, the Wilmot proviso, over it. The act was approved by Mr. Polk. These legislative precedents commenced during the first Congress holden under our present form of Government, and have continued without interruption to the present time.

The acts referred to, recognize, regulate and prohibit slavery, and in fact embrace a full and complete exercise of legislative power over the whole subject. Many of them were passed by the consent of those very patriots and statesmen who aided in the formation of our Constitution, whom it is reasonable to presume, best understood the extent of legislative power conferred by that instrument. These acts have been approved by all the Presidents who were incumbents of the Executive chair at the time of their several enactments, from Washington to Polk. They have been invariably sustained by the decisions of the Supreme Court, a co-ordinate department of our Government, authorized to decide all constitutional questions, and from whose opinions no appeals are known by the laws of the land. The writers on our constitutional laws admit the existence of the power. The Constitution expressly grants it, in my opinion. But, if a doubt lingered on my mind, it would be removed by the concurrent weight of evidence adduced. I again repeat, I am constrained to believe Congress has the power, under the Constitution, to admit slavery into or exclude it from the Territories. The testimony and authorities referred to clearly demonstrate the non-existence of negro slavery within New Mexico and California, and the impracticability of its being carried there, except by the assent

of Congress. Can that be obtained? A considerable majority of all the members of this branch of Congress are from the free States. The people whom they represent are opposed to slavery, and regard it as a moral and political evil.

Shortly after the adoption of our present form of Government, the States of the North, in which slavery then existed, gave an indubitable proof of their attachment to the principles of universal freedom and abhorrence of human bondage, by commencing a course of legislation for its gradual extinction, which has long since been accomplished. The frequent agitation of the subject of slavery, and the acrimonious and vindictive discussions emanating from it, has considerably increased the enmity of the Northern people to the institution, and settled the public mind against the further enlargement of the area of slavery. If there is one sentiment common to the people of the North it is a fixed and unalterable determination to resist, by all lawful and constitutional means, the introduction of negro slavery into these Territories. Is there a member in this chamber from the free States, who will truly reflect the wishes of his constituents by voting to extend it beyond its present limits? No gentleman can be elected from any one of all the Congressional districts of the free States, who is not pledged or known to be opposed to it. The Governments cannot be organized unless the principle of slavery be excluded. Upon this subject the people of the North will neither be influenced by persuasion nor intimidated by threats. They know their rights and are determined to maintain them by the use of all lawful means. It is unnecessary for me to decide upon the justice of their resolve. I only speak of it as an existing and unquestionable fact. Can the interest of the slave States be promoted by a failure at this session to organize Governments for the Territories? Are the probabilities increased of slavery being established there by such delay? I cannot perceive upon what foundation such a hope can be reared. The people of the North argue that to admit slavery is, in effect, to exclude free labor; that experience has tested that free labor and slave labor will not fraternize; that it never has and never will exist to any extent together; that free labor is necessarily degraded by an association with slave labor; and consequently the people of the North are virtually excluded from these Territories if negro slavery is admitted. They further state that of all the territory acquired by purchase of France and Spain, now including the States of Louisiana, Arkansas, Missouri, Iowa, and Florida, four out of the five have been admitted into the Union as slave States, and Texas, by the articles of annexation, came in as a slave State; that, heretofore, if slavery existed in the Territories at the time of its acquisition, it was recognized in the Territorial Government furnished them by Congress; that this Territory came into the Union free, and they only demand it may be kept so by a law of Congress; but the South, selfish and exacting, refuse this reasonable request, after having heretofore appropriated five-sixths of the States previously acquired to the uses of slavery. They believe slavery to be an exclusive and aristocratical institution, elevating the slaveholder above all stimulus to labor, and sinking the other part of the com-

munity below it. That it is the duty of Congress to shape its laws so as to produce the greatest good to the greatest number; that but few of the whole number of the citizens even of the slave States, are slaveholders, consequently, as Congress encourages the extension of slavery, they crush the rights and humble the social position of all other classes of the community. Will men entertaining and cherishing such opinions abandon them for trivial causes? Delay in giving Governments to these Territories upon the terms claimed by the North, will, in my opinion, add intensity to a feeling now bordering on fanaticism. Will the citizens of these Territories be willing to incorporate the principle of slavery in a State Constitution? The Mexican population it is well known are opposed to it. Of those going from the slave States not one in fifty will be a slaveholder and none will take their slaves with them, because when voluntarily carried there by their master, they become entitled to their freedom. Two-thirds of the emigrants will be from the free States and countries where it is not recognised, and will be equally adverse to it.

But should the citizens of these Territories desire admission into the Union with that feature in their Constitution, Congress would not suffer it. The Constitution of the United States says: "Congress may admit new States into the Union," thereby giving to them full and discretionary power upon the subject. The treaty with the Republic of Mexico stipulates that the time of their admission into the Union shall depend upon the will of Congress. I am satisfied both natural causes and political causes exist which will ever prevent slavery being established in these Territories. I should consider my conduct unwise and impolitic to oppose the establishment of governments where the necessity for them is so urgent, by a cavil, upon a matter of mere moonshine. It is exclusively a question of expediency and of justice. Taking into consideration all the circumstances of the controversy, I believe it would be expedient in the members of Congress from the slave States to agree to the establishment of a government with a clause prohibiting slavery. By so doing they sacrifice no interest, concede no principle, nor abandon any rights belonging to the slave States. It would take the principal element from the question of the abolition of slavery, the agitation of which can do no good to the South, and may be productive of much mischief and evil to the whole Union. The dishonest interference by the abolitionists with the vested rights of the people of the slave States, guaranteed to them in the compromises of the Constitution, has greatly embarrassed and delayed the settlement of this controversy by exciting sectional jealousies and local animosities. Their aggressions have been entirely unprovoked and highly injurious to the owners of slaves: Slavery is a State institution, exclusively under State control and management. It can be established or abolished at its supreme will and pleasure. Congress has no power over, or right to interfere with it, in any shape whatever. The State Governments, in their regulations upon this subject, are only responsible to their own constituents, to the general laws of propriety, humanity, and justice, and to God. Any attempt to disturb the relations existing between the

master and his slave, by persons not living within the slave States, is a violation of the spirit of the Constitution, and highly reprehensible to the parties engaged in it, be it done by individuals, parties, or by State legislation.

The abolition party have caused to be circulated in the slave States, incendiary publications with the intention of exciting discontent among the slaves. They have sent emissaries into these States, instructed to incite the slaves to abandon their owners, and to aid in their escape, and by the employment of such practices, have in many instances effected their nefarious purposes.

They have by force within the limits of the free States taken slaves from the possession of their rightful owners. These acts, with many others of a similar kind, which it is unnecessary to enumerate, are offensive and injurious to the slave owner, and cannot be justified upon any principle of honesty or morality. The troublesome interference of these fanatics have counteracted their own avowed intentions. The use of moral persuasion, the adduction of substantial arguments against the utility and justness of holding human being, in perpetual bondage, addressed to the master and not to the slave, is the only legitimate mode of effecting emancipation. But the people of the North are no more responsible for the conduct of these fanatics, than are the citizens of the slave States amenable for the unlawful acts and heinous offences of their own horse-thieves, counterfeiters, and murderers.

The Northern and Southern States mutually charge each other with having committed aggressions upon their respective rights, and to a limited extent it is true; when the States accepted the Constitution, they agreed to give full effect to its provisions and to perform all the duties to which it bound them. The 4th article of that instrument, giving the slave States the right of reclamation, and making it the duty of the free States to deliver up fugitive slaves upon demand, is clear, explicit, and unequivocal in its intent and meaning. Legislation by any State to avoid the full and faithful discharge of the duties imposed by said article is in violation of the spirit and letter of the Constitution. And they stand justly exposed to the imputation of bad faith and dereliction of a pledged duty. Any laws passed by any Southern State in contravention of the rights of the citizens of the Northern States is liable to the same objections and imputations. Give Governments to these Territories and it will bring about a restoration of mutual good feeling between the South and North, which may lead to a correction of these aggressive acts.

To the Voters of the Fourth Congressional District :

GENTLEMEN: I take this opportunity to announce myself a candidate for re-election to the next Congress of the United States. I believe it has been the usual practice, under ordinary circumstances, to approve the political and legislative course of the Representative by a re-election, if merited. If in the discharge of my legislative duties I have done anything to offend, I am unapprised of it. I have to the best of my abilities discharged my duty to you and the country.

Thankful for passed favors, I am, gentlemen, your obedient and humble servant,

AYLETT BUCKNER.





